

General Information Letter: Nexus determinations are very fact-specific and are not the proper subject of a letter ruling.

May 12, 2003

Dear:

This is in response to your letter dated January 14, 2003 in which you request a letter ruling. The following is in response to your request with respect to Illinois income tax. Your request with respect to sales and use tax has been referred to the Sales Tax Division and will be addressed by a separate ruling. The nature of your request and the information provided with respect to Illinois income tax requires that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code § 1200.120(b) and (c), which may be accessed from the Department's web site at www.ILtax.com.

Your letter states as follows:

I am a partner in a Tennessee business. In 2000 and 2001, we were invited to Illinois to participate in events at churches and a school, at which we sold products. We registered with the state of Illinois to conduct business and collect sales tax (number XXXX-XXXX). We did not return to Illinois for business in 2002, though we did have a few mail and internet purchases from customers in Illinois.

We continued to collect sales tax from Illinois customers at the beginning of 2002. I requested that our registration be cancelled, but after consultation with two people in your office, we kept our registration but stopped collecting sales tax on orders sent from Tennessee to Illinois. Our invoices tell out-of-state customers that they may be responsible for use taxes if they did not pay sales tax to us.

I had questions after my discussions with your representatives, but I decided not to pursue it further at the time. We received our annual sales tax reporting form, and I decided that I will go ahead and report all of our sales in Illinois from 2002, which total \$273.80. So, I estimate the amount we owe you to be \$17.11.

I understand your desire to collect sales and use taxes from everyone, and that collecting them from businesses is easier than from individuals. However, we are a small family business with three partners, and collecting sales tax for multiple states at multiple rates is a burden, albeit a relatively small one.

We arranged with other states where we occasionally do business in-state (including Kentucky, Virginia, Indiana, Georgia, Alabama, Mississippi, and Florida) to collect and remit sales tax for those events in-state to which we are invited, but we do not collect or report tax on our internet and mail orders.

Can we make such an arrangement with you? We may come to Illinois on business this year, but that is not definite. Here are a couple of questions:

1) Must we continue to be registered with you even if we are only invited to an occasional event in Illinois? (We do not have sales representatives there, and we do not just peddle on

the street). If we do come to Illinois, I will be glad to collect and remit the sales tax for that event.

2) Must we report and pay Illinois income tax on the \$273.80 we received from Illinois customers last year through mail and internet orders?

RULING

The determination whether a taxpayer has nexus with Illinois is extremely fact-specific. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. For information regarding nexus, see Department of Revenue Regulations Section 100.9720 (accessible from the Department's web site). In addition, the following general information may be provided.

The United States Constitution restricts a state's power to subject to income tax foreign corporations and other nonresidents. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction the state seeks to tax. (*Quill Corp. v. N. Dakota*, 504 U.S. 298 (1992)) Similarly, the Commerce Clause requires that a state's tax be applied only to activities with a substantial nexus to the taxing state. (*Id.*) In the case of foreign corporations, Illinois may assert nexus to tax unless the corporation falls under the protection conferred by Public Law 86-272. (15 U.S.C. § 381) Public Law 86-272 precludes any state from subjecting a nondomiciliary corporation to a net income tax where such corporation's only activities within the state for the taxable year consist of solicitation activities for sales of tangible personal property.

As a general rule, the Department interprets the concept of nexus as broadly as possible. Where any part of a nonresident taxpayer's income is allocable to Illinois under Article 3 of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/101 *et seq.*), Illinois may demonstrate the connection or nexus necessary to subject a nonresident to tax.

Section 502(a) of the IITA sets forth the requirements for filing Illinois income tax returns. That section states in pertinent part as follows:

(a) In general. A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:

(1) For which such person is liable for a tax imposed by this Act, or

(2) In the case of a resident or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

Under this section, a nonresident must file an Illinois income tax return if it incurs a liability for tax imposed under Section 201 of the IITA (or in the case of a corporation qualified to do business in Illinois, if it is required to file a federal return). A nonresident is liable for Illinois income tax under Section 201 if it computes "Illinois net income" as defined under IITA Section 202. IITA Section 202 defines Illinois net income as that portion of the taxpayer's "base income" as defined in Section 203, which is allocated or apportioned to Illinois under the provisions of Article 3 of the IITA, less certain deductions. The above provisions may be accessed from the Department's web site.

IITA Section 304 provides for taxable years ending on or after December 31, 2000 that the apportionment factor for a nonresident deriving business income from Illinois and one or more other states (other than an insurance company, financial organization, or transportation company) shall be equal to its sales factor. Section 304(a)(3)(A) defines the sales factor as a fraction, the numerator of which is the total sales of the person in Illinois during the taxable year, and the denominator of which is the total sales of the person everywhere. Department of Revenue Regulations Section 100.3700(c)(1) states that gross receipts from sales of tangible personal property are allocable to Illinois for sales factor purposes if the property is delivered or shipped to a purchaser within this State, regardless of f.o.b point or other conditions of sale. Regulations Section 100.3370(c)(3) provides that gross receipts from the sale of intangible personal property are allocable to Illinois if the income-producing activity that gave rise to the receipts is performed wholly in Illinois, or the income-producing activity is performed in Illinois based on costs of performance. The above provisions may be accessed from the Department's web site.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department, please submit a request conforming to the requirements of 2 Ill. Adm. Code § 1200.110(b).

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)